VINTON-ROANOKE WATER CO. *v.* CITY OF ROANOKE.

Jan. 13, 1909.

[66 S. E. 835.]

1. Waters and Water Courses (§ 200*)—Water Companies—Contracts.—A water company, which contracts to give a city the free use of necessary water for its public market house, courthouse, and jail, and other public buildings, including buildings for fire companies and public school buildings, need not furnish water free of charge to fish sheds owned by the city and in existence at the time of the contract and leased by the city to individuals who pay rent therefor, especially where the city and the company for several years construed the contract so as not to require the company to furnish such water.

[Ed. Note.—For other cases, see Waters and Water Courses, Dec. Dig. § 200.* 13 Va.-W. Va. Enc. Dig. 670.]

2. Municipal Corporations (§ 120*)—Ordinances—Construction.—The court, in construing an ordinance granting a franchise, must look to the whole ordinance to ascertain the intention of the parties as to a particular subject not specifically and clearly provided for.

[Ed. Note.—For other cases, see Municipal Corporations, Dec. Dig. § 120.* 10 Va.-W. Va. Enc. Dig. 613.]

3. Waters and Water Courses (§ 200*)—Water Companies—Franchise.—An ordinance granting a franchise to a water company, which provides that the company shall furnish, free of charge, water to public buildings, but shall not be put to any expense in constructing and maintaining the pipes, etc., necessary therefor, and furnish free water for troughs for horses and public drinking fountains, so situated as not to necessitate the laying of additional mains, and which provides that the city shall furnish at its own expense the troughs and drinking fountains, and place the same in position, and which binds the company to furnish water, free of charge, to fire hydrants at such points as the city may designate, along streets where the company has laid its mains, but the city shall furnish the fire hydrants at its own expense, requires the company to allow the city to use the water free of charge for fire hydrants, but the city must pay the cost incidental to connecting itself with the water mains, and when the company has laid its mains along streets, where the city may connect and use the water, its obligation to the city is discharged.

[Ed. Note.—For other cases, see Waters and Water Courses, Dec. Dig. § 200.* 13 Va.-W. Va. Enc. Dig. 670.]

Error to Corporation Court of Roanoke.

Mandamus by the City of Roanoke against the Vinton-Roa-

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

noke Water Company. From an order granting relief in part, defendant brings error, and plaintiff assigns cross-error. Reversed and rendered denying the writ and dismissing the petition therefor.

C. A. McHugh, for plaintiff in error.
C. B. Moomaw, for defendant in error.

EQUITABLE LIFE ASSUR. SOCIETY OF UNITED STATES *v.* WILSON et al.

Jan. 13, 1910. Rehearing Denied.

[66 S. E. 836.]

1. Equity (§ 367*)—Cross-Bill—Dismissal of Bill.—An administrator sued an insurance company, which had issued a policy on the life of intestate, asserting a claim to the surrender value of the policy, and sought to have intestate's widow enjoined from suing for the same, and in a cross-bill the widow asserted title. Held, that it was proper on dismissal of the bill on demurrer to retain the cross-bill.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 774; Dec. Dig. § 367.* 4 Va.-W. Va. Enc. Dig. 120.]

2. Equity (§ 367)—Cross-Bill—Dismissal of Bill.—Dismissal of the original bill does not necessarily carry with it the cross-bill. If the cross-bill is defensive merely, dismissal of the original bill dismisses the cross-bill; but, if the cross-bill sets up new facts, and prays for affirmative relief against the plaintiffs in the original, the cross-bill remains for disposition.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 774; Dec. Dig. § 367.* 4 Va.-W. Va. Enc. Dig. 120.]

3. Insurance (§ 133*)—Contract—Validity.—Va. Code 1904, § 3252, provides that in any action against an insurer no failure to perform any condition, nor violation of any restrictive provision, shall be a valid defense, unless such condition or restrictive provision is printed in type as large or larger than that commonly known as long primer type, or is written with pen and ink in or on the policy. Held, that where the provision of a life policy that demand for a paid-up policy must be made within six months after the lapse of the original policy was not printed in type of the required size, nor written, the limitation was invalid as against insured or his beneficiary.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 133.* 7 Va.-W. Va. Enc. Dig. 774.]

Appeal from Corporation Court of Newport News.

Suit by the administrator of John M. Wilson, deceased, against

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.